

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HERBERT HALE and U.S. POSTAL SERVICE,
POST OFFICE, New Orleans, La.

*Docket No. 97-855; Submitted on the Record;
Issued January 14, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether appellant has more than a 50 percent permanent impairment of the right testicle for which he received a schedule award.

The Board has duly reviewed the evidence contained in the case record and finds that appellant is entitled to a schedule award for a 100 percent permanent impairment of the right testicle.

The facts in this case indicate that on January 3, 1986 appellant, then a 30-year-old mailhandler, sustained an employment-related lumbar strain and testicular injury which required surgical removal of the left testicle and right orchiopexy. The Office of Workers' Compensation Programs also accepted that appellant sustained employment-related depression. On December 14, 1987 appellant submitted a claim for a schedule award and, by decision dated April 12, 1988, the Office granted him a schedule award for a 100 percent permanent impairment of his left testicle.¹ By letter dated June 7, 1995, appellant submitted a claim for additional injuries and submitted a March 31, 1995 report from Dr. Michael B. Scott, a Board-certified urologist. By decision dated October 1, 1996, the Office granted appellant a schedule award for a 50 percent permanent impairment of the right testicle for the period March 31 to September 28, 1995 for a total of 26 weeks of compensation. The instant appeal follows.

¹ The schedule award was for the period March 4, 1986 to March 2, 1987, for a total of 52 weeks of compensation. The Office noted that, as appellant was receiving wage-loss compensation for this period, he was owed zero for his schedule award. Following appellant's appeal, by decision dated October 24, 1988, the Board remanded the case to the Office to determine if appellant had been properly notified of his right to make an election to receive benefits under the Civil Service Retirement System during the retroactively determined period of the schedule award. Copies of these decisions are not found in the record. By decision dated March 22, 1990, the Office denied appellant's request to adjust the effective date of his schedule award and, by decision dated December 7, 1990, the Board affirmed this decision.

Under section 8107 of the Federal Employees' Compensation Act² and section 10.304 of the implementing federal regulations,³ schedule awards are payable for permanent impairment of specified body members, functions or organs. However, neither the Act nor the regulations specify the manner in which the percentage of impairment shall be determined. For consistent results and to ensure equal justice under the law for all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The American Medical Association, *Guides to the Evaluation of Permanent Impairment*⁴ (hereinafter A.M.A., *Guides*) have been adopted by the Office, and the Board has concurred in such adoption, as an appropriate standard for evaluating schedule losses.⁵

The relevant medical evidence includes Dr. Scott's March 31, 1995 report in which he advised that, based on right testicular biopsy and vasography done on November 11, 1994, complications of the January 3, 1986 injury resulted in obstructive azoospermia of the right testicle with obstruction of the vas deferens at multiple levels and obstruction of the epididymis at multiple levels, infertility due to the complete loss of transport system for semen, most likely secondary to post-traumatic scarring of the vas deferens and the epididymis, and sexual dysfunction with erectile insufficiency. In a September 25, 1996 report, an Office medical consultant, Dr. Ellen Pichey, advised that appellant reached maximum medical improvement on March 31, 1995, and indicated that, under section 11.5c of the 4th edition of the A.M.A., *Guides*,⁶ the total impairment for the right testicle equaled 50 percent. Dr. Pichey further stated that, based on loss of sperm transport, appellant's impairment would fall in the class 2, 10 percent whole person category, noting that the maximum whole person impairment is 20 percent.

Section 8107(c)(22) provides "for permanent loss or loss of use of any other important external or internal organ of the body as determined by the Secretary, proper and equitable compensation not to exceed 312 weeks of compensation for each organ so determined shall be paid in addition to any other compensation payable under this schedule."⁷ Pursuant to the authority provided in section 8107(c)(22), the Office added seven organs of the body to the compensation schedule in section 10.304(b) of its regulations.⁸ This section of the regulations specifies that 52 weeks of compensation shall be paid for loss, or loss of use, of one testicle. In the present case, the Office issued appellant a schedule award for a 50 percent permanent impairment of the right testicle, yet Dr. Scott's March 31, 1995 report indicates that appellant's right testicle is totally impaired. While Dr. Pichey advised that total impairment of the right

² 5 U.S.C. § 8107.

³ 20 C.F.R. § 10.304.

⁴ A.M.A., *Guides* (4th ed. 1993).

⁵ See *James J. Hjort*, 45 ECAB 595 (1994); *Leisa D. Vassar*, 40 ECAB 1287 (1989); *Francis John Kilcoyne*, 38 ECAB 168 (1986).

⁶ A.M.A., *Guides*, 258.

⁷ 5 U.S.C. § 8107(c)(22).

⁸ 20 C.F.R. § 10.304(b).

testicle equaled a 50 percent impairment, under section 10.304(b) the compensation schedule for loss of one testicle equals 52 weeks.⁹ Appellant is consequently entitled to an additional 26 weeks of compensation.¹⁰

The decision of the Office of Workers' Compensation Programs dated October 1, 1996 is affirmed as modified.

Dated, Washington, D.C.
January 14, 1999

George E. Rivers
Member

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

⁹ 20 C.F.R. § 10.304(b).

¹⁰ *Id*; see generally *Robert L. Bradshaw*, 41 ECAB 648 (1990).